

MOTION FILED
MAY 2 1978

IN THE
Supreme Court of the United States

October Term, 1977

No. 77-1378

JAPAN LINE, LTD.;
KAWASAKI KISEN KAISHA, LTD.;
MITSUI O.S.K. LINES, LTD.;
NIPPON YUSEN KAISHA;
SHOWA LINE, LTD.; and
YAMASHITA-SHINNIHON STEAMSHIP Co., LTD.,
Appellants,

—v.—

COUNTY OF LOS ANGELES;
CITY OF LOS ANGELES; and
CITY OF LONG BEACH,
Appellees.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF CALIFORNIA

**MOTION OF SEA LAND SERVICE INC.,
FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*
and
BRIEF OF SEA LAND SERVICE INC.,
AS *AMICUS CURIAE***

JAMES W. McGRATH, Esq.
Sea Land Service Inc.
4th & Main Street
Winston-Salem, North Carolina 27102
(919) 748-4100
Attorney for *Amicus Curiae*

IN THE
Supreme Court of the United States
October Term, 1977
No. 77-1378

JAPAN LINE, LTD.;
KAWASAKI KISEN KAISHA, LTD.;
MITSUI O.S.K. LINES, LTD.;
NIPPON YUSEN KAISHA;
SHOWA LINE, LTD.; and
YAMASHITA-SHINNIHON STEAMSHIP CO., LTD.,
Appellants,

—v.—

COUNTY OF LOS ANGELES;
CITY OF LOS ANGELES; and
CITY OF LONG BEACH,
Appellees.

**MOTION OF SEA LAND SERVICE INC.,
FOR LEAVE TO FILE BRIEF
AS AMICUS CURIAE**

Sea Land Service Inc. (hereinafter referred to as "Sea Land") hereby respectfully moves for leave to file the attached Brief *Amicus Curiae* in Support of Appellants' Jurisdictional Statement. The consent of the Attorneys for the Appellants was obtained on April 21, 1978. The consent of the Attorney for the Appellees was obtained on April 21, 1978. The Appellants' letter of consent and the Appellees' letter of consent are respectively attached hereto as Exhibits A and B.

Sea Land is a domestic corporation organized and existing under the laws of the State of Delaware. Sea Land

is the owner, lessee and operator of vessels, designed to carry freight by means of ocean containers, which are used in interstate and foreign commerce. The operations of Sea Land extend to more than 130 ports throughout the world. Sea Land maintains container terminals in various locations, including a major container terminal in Bremerhaven, the Federal Republic of Germany. As a domestic shipping company with extensive international operations, the principal concern of Sea Land is the likelihood of retaliation in the event the decision of the Supreme Court of the State of California in the instant case is allowed to stand. Sea Land has decided to file this motion, together with the accompanying Brief *Amicus Curiae*, largely because of certain events (some of which have occurred within the last 10 days) that are likely substantially to increase the risk of retaliation by foreign governments. These events are discussed in the accompanying Brief *Amicus Curiae*. As is noted in this Brief, the concern of Sea Land regarding retaliation is also shared by the United States Department of State.

Because of the serious adverse impact which retaliation could have upon the foreign operations of United States owned shipping companies, the Brief which *Amicus Curiae* is requesting to file will contain a more complete presentation of relevant facts in this respect than that of Appellants and can, therefore, make a significant contribution to the Court's consideration of Appellants' Jurisdictional Statement and the merits of the case.

Respectfully submitted,

JAMES W. McGRATH, Esq.
Sea Land Service Inc.
4th & Main Street
Winston-Salem, North Carolina 27102

IN THE
Supreme Court of the United States
October Term, 1977
No. 77-1378

JAPAN LINE, LTD.;
KAWASAKI KISEN KAISHA, LTD.;
MITSUI O.S.K. LINES, LTD.;
NIPPON YUSEN KAISHA;
SHOWA LINE, LTD.; and
YAMASHITA-SHINNIHON STEAMSHIP CO., LTD.,
Appellants,

—v.—

COUNTY OF LOS ANGELES;
CITY OF LOS ANGELES; and
CITY OF LONG BEACH,
Appellees.

**BRIEF OF SEA LAND SERVICE INC.
AS AMICUS CURIAE IN SUPPORT OF
APPELLANTS' JURISDICTIONAL STATEMENT**

Question Presented

Whether the imposition of property tax by local governments of the State of California upon foreign-owned containers used exclusively in foreign commerce is in violation of the Constitution of the United States (Article I, Section 10, Clauses 2 and 3; Article I, Section 8, Clause 3; Article VI, Clause 2; and Article II, Section 2, Clause 2) and various treaty obligations of the United States.

Interest of the *Amicus*

The interest of the *Amicus* Sea Land in submitting this Brief arises out of the necessity for maintaining uniformity in international taxation of ocean going shipping containers and preventing the imposition of retaliatory taxes. If the decision of the Supreme Court of the State of California (hereinafter referred to as the "California Supreme Court") is not reversed, Sea Land and similarly situated U.S.-owned shipping companies are likely to be subjected to retaliatory taxes upon the properties used in their shipping activities in various foreign countries.

Argument

The Court should hear this case because it presents important constitutional and treaty questions concerning the local taxation of foreign-owned instrumentalities of international commerce for the following two reasons. First, the decision of the California Supreme Court constitutes an unwarranted erosion of the established "home-port" doctrine, pursuant to which numerous foreign countries exempt U.S.-owned containers from local property taxation. Second, the decision of the California Supreme Court ignores constitutional and treaty restrictions, which limit the right of local governments to impose a property tax on shipping containers owned by foreign persons and used exclusively in international commerce. Unless the decision of the California Supreme Court is reversed, the imposition of property taxes by local governments in the United States on foreign-owned containers is likely to proliferate. Such proliferation will undoubtedly cause foreign jurisdictions, such as the Federal Republic of Germany ("West Germany") to retaliate against U.S. shipping companies, which will cause unnecessary and harmful multiple tax burdens likely to injure trade between nations.

Sea Land is, in particular, concerned about retaliation by West Germany, where Sea Land maintains a major container terminal. Sea Land has been advised that, in the event containers owned by West German shipping companies are subjected to local property taxation in the United States, reciprocal action would be taken with respect to containers owned by United States shipping companies or persons. The concern of Sea Land in this respect is also shared by the United States Department of State, which pursuant to a letter dated April 17, 1978, addressed to the Honorable Jerry Brown, Governor of California, expressed the opinion that certain proposed legislation in the State of California to exempt foreign-owned cargo containers from local property taxation "would also lessen the likelihood of retaliatory taxation measures against U.S. citizens engaged in ocean commerce abroad by foreign governments which do not currently impose a property tax on U.S. containers." A copy of this letter is attached hereto as Exhibit C.

On April 19, 1978, Sea Land was apprised that the Division of Assessment—Taxation of Multnomah County, Oregon, had notified various foreign owned shipping companies that they would be required to file personal property tax returns reflecting, *inter alia*, the number, cost and fair market value of containers located within the County as of January 1, 1978. Sea Land learned that this action was taken as the result of an opinion dated January 31, 1978 of an Assistant Attorney General of the State of Oregon, which opinion re-examined the Oregon personal property tax law in light of the decision of the California Supreme Court in the instant case. A copy of this opinion is attached hereto as Exhibit D.

Sea Land is concerned regarding this development for two reasons. First, this action on the part of the State of

Oregon strongly suggests that, unless the decision of the California Supreme Court in the instant case is reversed, the incidence of such local property taxes upon foreign owned containers is likely to proliferate and prompt retaliatory action by foreign governments. Second, Sea Land understands that at least one shipping company from West Germany utilizes port facilities located in Multnomah County, Oregon, for containerized cargo service and, in view of this new position adopted by the local property tax authorities in Oregon, is likely to be subjected to local property taxation therein. If such taxation occurs, it is virtually certain to precipitate reciprocal property taxation by the Federal Republic of Germany upon containers owned by United States persons.

Sea Land is directly and vitally concerned regarding the adverse effects which are likely to result unless the decision of the California Supreme Court is reversed.

We do not believe that the position expressed by the California Supreme Court takes into account either: (i) the existing law as developed under the Constitution and the various treaties entered into by the United States; and (ii) the adverse consequences to U.S. shipping and other carriers in foreign countries that will be generated if its decision is allowed to stand. In this respect, we speak from extensive, first hand experience. In the multitude of foreign ports which Sea Land maintains container operations, we have never experienced the incidence of local property taxes upon our containers. If foreign owned containers are subjected to local property taxes in the United States, it is virtually certain that local property taxes will be imposed upon United States owned containers upon a reciprocal basis.

The imposition of such taxes will create not only the burden of multiple taxation which may make U.S.-owned

shipping companies less competitive with certain foreign-owned companies, but it will also create a major administrative burden for U.S. shipping companies and air carriers that will seriously impede their operations and international trade. The problem which will be created thereby is likely to be insoluble in the area of foreign trade and commerce. In terms of interstate commerce, problems of multiple taxation can be resolved through the intermediacy of this Court. However, in connection with the problem of multiple property taxation in the area of foreign commerce, there exists no body with jurisdiction to intermediate. Therefore, all governments, other than the United States, have taken steps to assure that foreign-owned containers, temporarily within the country as part of an international voyage, shall be exempted from local taxation.

It is respectfully submitted that, based upon existing precedents under the Constitution and treaty obligations, this Court should conclude that the same rule is applicable under United States law.

Conclusion

For the foregoing reasons, jurisdiction of this should be noted.

Respectfully submitted,

JAMES W. McGRATH
Sea Land Service Inc.
4th & Main Street
Winston-Salem, North Carolina 27102

Exhibit A

BRIGER & ASSOCIATES

ATTORNEYS-AT-LAW

299 PARK AVENUE

NEW YORK, N. Y. 10017

(212) PLaza 8-4000

CABLE ADDRESS BRIGREN

TELEX NO. 237612

PETER L. BRIGER

AYDIN S. CAGINALP

JONATHAN S. KUSKO

MARGARET K. YONKO

U. K. ASSOCIATES

CHRISTOPHER M. BOND*

GRAHAM E. BERRY**

*ADMITTED IN UNITED KINGDOM

**ADMITTED IN NEW ZEALAND

LONDON OFFICE

STANBROOK HOUSE

2-5 OLD BOND STREET

LONDON W. IX 3TB, ENGLAND

TELEPHONE (01) 499-4822

CABLE ADDRESS: BRIGER LONDON WI

TELEX NO. 269280

PEMBROKE HOUSE

104 LOWER BAGGOT STREET

DUBLIN 2, IRELAND

TELEPHONE 764674

TELEX NO. 30472 CKEY-RI

FRANCIS T. SWEENEY

OF COUNSEL

April 21, 1978

James W. McGrath, Esq.

Sea Land Service Inc.

4th & Main Street

Winston-Salem, North Carolina 27102

Dear Mr. McGrath:

Reference is made to our telephone discussion on April 21, 1978, concerning the interest of Sea Land Inc. (hereinafter referred to as "Sea Land") to file a Brief *amicus curiae* in support of Appellants' Jurisdictional Statement in *Japan Line, Ltd., et al. v. County of Los Angeles, et al.*, Supreme Court of the United States, No. 77-1378.

2a

Exhibit A

We are pleased to inform you that we hereby consent to the filing of a Brief *amicus curiae*.

Sincerely yours,

/s/ PETER L. BRIGER
Peter L. Briger

PLB:rma

3a

Exhibit B

COUNTY OF LOS ANGELES
OFFICE OF THE COUNTY COUNSEL
648 HALL OF ADMINISTRATION
LOS ANGELES, CALIFORNIA 90012

[EMBLEM]

JOHN H. LARSON, COUNTY COUNSEL
DONALD K. BYRNE, CHIEF DEPUTY

April 21, 1978

(213) 974-1833

Mr. James W. McGrath
SEA-LAND SERVICES, INC.
Menlo Park, New Jersey

Re: *Japan Line Limited, et al. v. County
of Los Angeles; City of Los Angeles;
and City of Long Beach; U.S. Su-
preme Court Docket No. 77-1378*

Dear Mr. McGrath:

This will confirm the substance of our telephone conversation of today to the effect that we have no objections to your filing an Amicus Curiae Brief on behalf of the Ap-

4a

Exhibit B

pellants regarding the acceptance of this case for decision by the Supreme Court.

Very truly yours,

JOHN H. LARSON
County Counsel

By /s/ JAMES DEXTER CLARK
JAMES DEXTER CLARK
Deputy County Counsel

JDC:lvw

5a

Exhibit C

DEPARTMENT OF STATE
WASHINGTON, D.C. 20520

17 April 1978

The Honorable Jerry Brown,
Governor of California, Sacramento

Dear Governor Brown:

I am writing to express support for SB 1756, introduced by Senator Dills, to exempt foreign cargo containers principally used in the transportation of cargo by vessels in ocean commerce, from property taxation for the fiscal year 1979-80 and fiscal years thereafter. The Department of State is pleased to learn of the introduction of this bill and strongly recommends its passage.

Enactment of this bill would extend indefinitely the present exemption of such containers from property taxation. In response to past imposition of local property taxes upon such containers, foreign governments have expressed their concerns that containers owned by their citizens may be subjected to double taxations i.e., taxation both in the home country and in California. For example, the Department recently received an aide-memoir from the Government of Japan complaining that local California property taxes upon foreign containers used in foreign commerce constitute a tax burden which impedes the smooth development of U.S.-Japan trade relations. Enactment of SB 1756 would preclude any renewal of such concerns on the part of foreign governments.

The proposed legislation would also lessen the likelihood of retaliatory taxation measures against U.S. citizens en-

6a

Exhibit C

gaged in ocean commerce abroad by foreign governments which do not currently impose a property tax upon U.S. containers.

We believe the proposed legislation will foster the financial health and well-being of both U.S. and foreign vessels now operating to California. The legislation appears consistent with the principle of taxation based upon reciprocity. We hope it will receive early and favorable consideration.

Sincerely,

/s/ JULIUS L. KATZ
Julius L. Katz
Assistant Secretary for
Economic and Business Affairs

cc: Senator Dills
Senator Marks
Senator Beverly
Senator Nejedly
Senator Rodda
Senator Stull

Assemblyman Cullen
Assemblyman Bane
Assemblyman Bannai
Assemblyman Boatwright
Assemblyman Chel
Assemblyman Imbrecht
Assemblyman Knox
Assemblyman Vincent Thomas

7a

Exhibit D

DEPARTMENT OF JUSTICE
TAX DIVISION
104 State Office Building
Salem, Oregon 97320
Telephone: (803) 376-4494

January 31, 1978

Mr. Lindy Freeman
Division of Assessment & Taxation
Room 136
Multnomah County Courthouse
Portland, Oregon 97204

Re: Personal Property Tax on Cargo
Containers

Dear Mr. Freeman:

This opinion is in response to a question presented by your office concerning cargo containers.

QUESTION PRESENTED

Are cargo containers used in interstate and foreign commerce subject to personal property ad valorem tax assessment?

ANSWER GIVEN

Cargo containers continuously present in Multnomah County are not constitutionally immune from an apportioned personal property ad valorem tax. Neither do these cargo containers qualify for exemption under Oregon's freeport law, CRS 307.810.

Exhibit D

DISCUSSION

You have asked whether cargo containers used on container ships in interstate and foreign commerce can be assessed under the personal property ad valorem tax. Taxpayers have claimed that these containers are either immune under the protection of the United States Constitution or are exempt under Oregon's free port law.

To support their position of constitutional immunity, taxpayers have cited a decision by the Superior Court of California. *Japan Line, Ltd. v. County of Los Angeles*, 132 Cal Rptr 531 (L.A. County 1973). However, the Supreme Court of California recently reversed this superior court's decision. *Japan Line, Ltd. v. County of Los Angeles*, 141 Cal 905 (1977). The California Supreme Court held that an apportioned ad valorem tax on the cargo containers violated neither the Commerce Clause, the Import-Export Clause nor the Supremacy Clause of the United States Constitution. A copy of this recent decision and a copy of an earlier decision in *Sea-Land Service, Inc. v. County of Alameda*, 117 Cal2d 448, 528 P2d 56 (1974) are enclosed. Assuming that the cargo containers' presence in Multnomah County are similar to those in the California counties, these two cases clearly indicate that the cargo containers are subject to the ad valorem tax.

The taxpayers also contend that their cargo containers are exempt from ad valorem taxation under the Oregon free port law. However, ORS 307.810 grants an exemption only for

"Personal property in transit through this state [that] is goods, wares and merchandise destined for sale in the ordinary course of trade or business. . . ."

Exhibit D

The cargo containers are used to transport personal property destined for sale in the ordinary course of the trade or business, but are not, themselves, destined for sale out of state. The Oregon free-port law was not intended to extend to containers used and reused transporting goods.

The two enclosed California decisions clearly hold that cargo containers used in interstate and foreign commerce are not immune under the United States Constitution from an apportioned ad valorem tax. In addition, the Oregon free port law does not extend its exemption protection to the containers. Consequently, the continuous presence of cargo containers in Multnomah County subjects them to an apportioned ad valorem tax.

Sincerely,

/s/ JAMES D. MANARY

James D. Manary

Assistant Attorney General

bem

cc: Walt Taylor

Personal Property Assessment

RECEIVED

MULTNOMAH COUNTY

FEB 02 1978

BRUCE G. LAWMAN

DIRECTOR, DIVISION OF
ASSESSMENT & TAXATION